



Request for Offers 2023-04 MCE Flex Market Program Implementation October 30, 2023

MCE, a California Joint Powers Authority, seeks a qualified organization or team to assist in the management and operation of the current MCE Flex Market Program (“Program”). The Program includes three energy efficiency subprograms that span the residential and commercial market sectors and incorporate demand response, daily load shifting and permanent load shifting measures. The Program’s impact is evaluated utilizing normalized metered energy consumption (NMEC) methodologies.

I. ABOUT MCE

MCE’s mission is to confront the climate crisis by eliminating fossil fuel greenhouse gas emissions, producing renewable energy, and creating equitable community benefits.

MCE is a not-for-profit public agency and the preferred electricity provider for more than 580,000 customer accounts and 1.5 million residents and businesses across Contra Costa, Marin, Napa, and Solano counties. Setting the standard for clean energy in California since 2010, MCE leads with 100% renewable power at stable rates, delivering a 1200 MW peak load and significantly reducing greenhouse emissions and reinvesting millions in local programs.

MCE’s vision is to lead California to an equitable, clean, affordable, and reliable energy economy by serving as a model for community-based renewable energy, energy efficiency, and cutting-edge clean-tech products and programs.

II. BACKGROUND

MCE has been operating a suite of meter-based energy efficiency programs, known as the Flex Market Program, since 2020. The Program uses population-level NMEC methodologies for calculating energy savings associated with energy efficiency. The Program’s model compensates aggregators for delivering energy savings projects and assigns energy savings values based on the Avoided Cost Calculator (ACC).¹ An aggregator can be an installation contractor, consultant, or other organization that is involved in project implementation and submits the project in the applicable program.

The current subprograms included within the greater MCE Flex Market Program are the Residential Efficiency Market program, Commercial Efficiency Market program and the Peak Flex Market program. Each subprogram is specifically designed to provide unique benefits to MCE customers who install energy saving measures at their facilities. The current manuals outlining the implementation details can be found at the following locations:

- Residential Efficiency Market Implementation Plan:
 - <https://cedars.sound-data.com/documents/download/2861/main/>

¹ More information can be found here: <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/demand-side-management/energy-efficiency/idsm>

- Commercial Efficiency Market Implementation Plan:
 - <https://cedars.sound-data.com/documents/download/2842/main/>
- Peak Flex Market Implementation Plan:
 - <https://cedars.sound-data.com/documents/download/2862/main/>

The Commercial Efficiency Market is the most well-established of the three subprograms, and in 2023 is on course to exhaust the over \$5,000,000 operating budget. The Residential Efficiency Market and Peak Flex Market are still in program ramp-up and have significant budget available to expand the reach of these subprograms. The available operational budgets, inclusive of all program related costs, for 2024-2026 can be found in Table 1 below (please note that values are rounded to the nearest hundred thousand).

Table 1 Subprogram Operational Budgets

	2024	2025	2026
Commercial Efficiency Market	\$6,400,000	\$6,100,000	\$6,000,000
Residential Efficiency Market	\$1,400,000	\$1,400,000	\$1,400,000
Peak FLEX Market	\$500,000	\$500,000	\$500,000
Total	\$8,300,000	\$8,000,000	\$7,900,000

MCE is looking for an implementer(s) to:

- Build on the current Program successes and develop new strategies to maximize results;
- Administer innovative aggregator recruitment and management that will result in a robust, well-informed pool of aggregators bringing projects to the Program;
- Provide measurement and analytics support using California Public Utility Commission (CPUC)-approved methodology to quantify project benefits and payments due to aggregators;
- Deliver required reporting data to MCE; and
- Achieve success across all subprograms.

III. PROPOSED SCOPE OF WORK

A contract awarded as a result of this Request for Proposals/Offer will include the following proposed scope of work, subject to revision:

Task 1: Aggregator Recruitment and Program Management

Implementer(s) is strongly encouraged to develop and use unique approaches to address the inherent differences between the market segments for each subprogram. A few examples of differences between subprogram segments are: aggregator type, project size, project cycle, etc. MCE is seeking an implementer(s) that can recruit and manage aggregators in all subprogram market segments.

1. Aggregator Recruitment

- a. Marketing and Aggregator Recruitment
 - i. Implementer(s) shall provide marketing activities related to the promotion of subprograms to aggregators that operate, or are

interested in operating, in MCE's service area. This includes, but is not limited to:

- a. Providing direct and indirect communication regarding subprograms' content and value via phone, email, social media, print media and trade shows.
 - b. Establishing a Flex Market Program website which allows aggregators to access Program information.
 - c. Collaborating with MCE staff for all marketing-related activities.
 - d. Actively recruiting aggregators throughout the contract duration.
 - e. Reporting on progress monthly to MCE, including any plans for course corrections as needed.
- b. Aggregator Training
- i. Implementer(s) shall provide training and resources for aggregators enrolled in the Program to maximize their participation. Implementer(s) shall provide details of industry relationships and other means by which implementer(s) will reach potential aggregators and, by extension, subprogram participants.
 - ii. This includes, but is not limited to:
 - a. Aggregator training on Program rules and how to maximize value and convey that value to participants.
 - b. Development and implementation of Program tools and strategies to ensure aggregator success.
 - c. Monthly communications to aggregators with strategies for project development. This should include, but is not limited to, energy forecasting strategies, emerging technology information, general market information, and updates related to complimentary programs.

2. Aggregator Management

- a. Aggregator Communications
 - i. Implementer(s) shall provide Program communications to aggregators and external partners. This includes but is not limited to:
 - a. Acting as the Program interface for all aggregator partners and providing support as needed to help aggregators participate in the Program.
 - b. Supporting telephone, email and website communication pathways for aggregators to participate in the Program.
 - c. Communicating all Program changes to aggregators in a timely fashion.
- b. Program Data and Documentation
 - i. Implementer(s) shall create and maintain a database for aggregator management which allows for progress tracking of aggregator enrollment and documenting participation in the Program. This includes, but is not limited to:
 - a. Archiving aggregator information such as enrollment documentation, contact information, billing information, project pipeline details, etc.
 - b. Incorporating all project-level information such as customer information, engineering documents, project budget reservation

details, measure installation dates, project costs, the amount of incentives passed to customers, energy measurement dates, etc.

- c. The database shall be made available to MCE, and appropriate integrations with MCE's Salesforce Customer Relationship Management (CRM) system shall be made available within 3 months of contract execution. An option for direct access to the MCE CRM through a vendor portal may be available.

3. Program Management

- a. Implementer(s) shall provide operational management of Flex Market Program functions, including but not limited to:
 - i. Recruiting, qualifying, enrolling and contracting with aggregators.
 - ii. Aligning aggregators and projects to meet Program requirements, including, but not limited to: Program rules, incentive structures, funding, etc.
 - a. The Program rules, incentive structures and funding for subprograms may evolve with regulatory changes and funding approvals, as directed by MCE or the CPUC, which implementer(s) shall incorporate into the Program and communicate to aggregators.
 - iii. Provide all necessary content to MCE to be included in any applicable Program Implementation Plans ("PIPs").
 - iv. Collecting, storing, and, upon oral or written request by MCE, promptly sharing with MCE all project and programmatic data, including but not limited to: project costs, energy savings forecasts, measure lists, customer project costs, aggregator incentive payments and enrollment dates.
 - v. Developing and implementing the terms and conditions of Program operation with MCE's written approval, including project and customer eligibility rules, access to incentive budgets, Measurement & Verification ("M&V") plans, and Quality Assurance ("QA") requirements and processes.
 - vi. Completing and enrolling applicable projects in the Flex Market subprograms.
 - vii. Adhering to MCE branding and marketing requirements when requested by MCE, and consistently incorporating MCE feedback and guidance pertaining to customer relationship management.
 - viii. Leading Program management meetings with relevant stakeholders.
- b. Managing the allocation of incentive budgets among the aggregators in accordance with the PIPs by ensuring that customer impacts and delivered benefits are fully optimized within budget availability, and by ensuring that sufficient incentive funds are available for all projects enrolled.
- c. Program Reporting
 - i. Provide monthly reports to MCE with the following Program information:
 - a. Aggregator recruitment activities.
 - b. Aggregator project pipeline, with details about individual stages of each active aggregator in each subprogram.
 - ii. Provide monthly reports of measure-level data for CPUC reporting as requested by MCE staff and/or MCE contractors.

- iii. Provide additional ad-hoc reports as required by CPUC staff and/or MCE staff.

Task 2. Program Measurement and Analytics

1. Implementer(s) shall provide project screening to ensure eligible projects are accepted into the MCE Flex Market subprograms. This includes evaluating eligibility of a project based on the information provided by the aggregator, subject to the subprogram criteria as defined in the PIPs.
2. Implementer(s) shall calculate and report project-level savings and total subprogram savings to MCE and participating aggregators by:
 - a. Adhering to timelines and rules for reporting as established by MCE and/or the CPUC.
 - b. Quantifying NMEC savings as required by MCE or CPUC for subprograms, and as described in the PIPs, M&V Plans and/or program manuals.
 - c. Adhering to the "Rulebook for Programs and Projects Based on Normalized Metered Energy Consumption, Version 2.0, Release Date: January 7, 2020"² ("Rulebook"), or the most current rulebook administered by the CPUC in the management of MCE's population-level NMEC programs.
 - i. Implementer(s) shall be responsible for tracking the publication of any updates or new versions of the rulebook and shall utilize and ensure that all aggregators utilize the updated or new versions of the rulebook once released.
 - d. Implementer(s) shall provide verified data, completed NMEC savings assessments, and supporting materials including auditable meter-level records of calculations to MCE for the purposes of supporting MCE's savings claims filings with the CPUC and any other governing authorities as may be required.
 - e. With respect to payable energy savings, implementer(s) shall:
 - i. Calculate payable energy savings per the PIPs.
 - ii. Report verifiable payable energy savings to MCE for the purpose of invoicing and paying aggregators.
3. Implementer(s) shall prepare and verify aggregator invoices and provide such invoices to MCE on a timely basis and, if requested by MCE, provide MCE with supporting documentation verifying the invoice amount.
4. Implementer(s) shall create a process for validating forecasts of first year NMEC savings provided by aggregators.
 - a. Validation process and the requirements to implement it shall be described in the applicable section of MCE's PIPs.
5. Implementer(s) shall provide a database that tracks and reports aggregator energy savings results throughout the project lifecycle. This database shall include project-level detail that includes, but is not limited to:
 - a. Site information.
 - b. Primary measure type.
 - c. Program year.
 - d. Reserved budget.
 - e. Forecasted energy savings.

² Which can be found here: <https://www.cpuc.ca.gov/-/media/cpuc-website/files/legacyfiles/n/6442463694-nmec-rulebook2-0.pdf>

- f. Forecasted Total System Benefit (TSB).
- g. Measured energy savings.
- h. Measured summer peak energy savings.
- i. Measured summer net peak savings.
- j. Measured TSB.
- k. Aggregator payment recommendation.

MCE will consider proposals/offers that include the entire scope outlined in both Tasks 1 and 2, as well as proposals/offers that include scopes outlined in either Task 1 or Task 2.

IV. REQUIRED CONTENT OF PROPOSALS

Proposals/offers must include all the following components in sufficient detail to allow MCE to evaluate the proposal/offer (using the criteria in Section 5 below):

- a. *Introduction/Cover Sheet*. Briefly introduce the organization and summarize its most relevant experience in the energy efficiency field. Please provide details on the organizational structure and indicate if the proposal/offer is responding to Task 1, Task 2, or to both tasks.
- b. *Demonstrated Experience*: Provide detail on the organization's experience implementing performance-based energy efficiency programs. Highlight relevant experience related to the applicable task items presented in the Proposed Scope of Services.
- c. *Proposed Work Plan and Timeline*: Describe the major tasks and estimated timeline required to complete the above Proposed Scope of Work. Please provide separate work plan sections for Tasks 1 and 2, which will be scored independently according to the Evaluation Criteria in section 5 below. Please also address the following items:
 - i. Task 1:
 - 1. What unique strategies will you employ to attract participation from aggregators? How will these strategies vary by subprogram?
 - 2. How will the organization ensure that aggregators are kept informed of any subprogram changes in a timely manner?
 - ii. Task 2:
 - 1. Please describe the organization's risk management approach to dealing with missing or incomplete data in a way that does not delay aggregator incentive payments.
 - 2. Describe the quality assurance approach to data management.
- d. *Price*: Proposals should include pricing for any items in or related to the Proposed Scope of Work for which MCE would be billed. Please provide separate pricing for Task 1 and Task 2. Pricing should be tied to Program performance.
- e. *Information and Resources Required from MCE*: Please indicate what, if any, additional resources or information would be required from MCE to complete the Proposed Scope of Work.

- f. *Statement of Qualifications:* Describe the organization’s specific qualifications which will enable it to develop workable solutions to address each point in the Proposed Scope of Work. Attach copies of any relevant licenses and certifications.
- g. *References:* Provide three business references that can attest to the organization’s work history and the general quality of work performed.
- h. *Contract Terms: Review MCE’s Energy Efficiency Standard Form Agreement (Attachment A) with the organization’s Legal department. If Respondent requires any deviations from MCE’s standard contract terms listed in Attachment A, Respondent must provide a redline with requested edits or list the terms where Respondent will require an edit with sufficient detail explaining the need for such an edit.*

V. EVALUATION CRITERIA

MCE will evaluate proposals/offers using the following criteria:

Criteria	Task 1	Task 2
Demonstrated Experience	30%	30%
Proposed Work Plan	30%	30%
Price	20%	20%
References	20%	20%

MCE will utilize the criteria above to rank responses. Each individual task item will be scored independently, and organizations will be ranked according to each task responded to. MCE may elect to invite top respondent organizations for an interview. Details of the interview will be shared with the respondent organizations as applicable.

VI. KEY DEADLINES AND SUBMISSION REQUIREMENTS

- a. *Notice of Interest:* A notice of interest in submitting a proposal/offer is not required, however, it is useful for the evaluation process. No later than the deadline for submitting questions, all parties interested in responding to this RFO are encouraged, but not required, to notify MCE via email of the intent to submit a proposal/offer. This notice creates no obligation to submit a proposal/offer but will ensure that interested parties are copied on MCE’s responses to questions submitted by other potential respondents. Notices must be sent to contracts@mcecleanenergy.org and should include the respondent’s company name and email contact information, referencing “**MCE RFO 2023-04 Flex Market Program Implementation – Notice of Interest**” in the subject line.
- b. *Deadline for Questions.* Any questions related to the content of this RFO must be submitted to contracts@mcecleanenergy.org no later than **November 9th, 2023** at 4:00pm.
- c. *Deadline for Responses.* MCE Responses to all questions received will be sent to all respondents that submitted questions and/or provided a complete Notice of Interest via email by **November 16th, 2023**, at 4:00pm.

- d. *Submission Deadline.* To be eligible for considerations, all responses must be submitted via the below Egnyte upload link, in either .pdf or .docx (Word) file format, no later than 4:00pm on **November 22nd, 2023**:

<https://mea.egnyte.com/ul/EZ1TFhDNHL>

Respondents must fill in the two required fields as follows before uploading documents:

Name: Please list Company Name;

Email Address: List email address of the contact submitting the response.

Please leave the optional third field requesting company name blank; company name should be listed in the first required field titled "Name".

Respondents may upload files until the deadline listed above. Any submissions received after the deadline will not be considered.

- e. *Selection of Contractor.* Subject to the General Terms and Conditions below, MCE anticipates that the contractor selection process will be completed by **December 22nd, 2023**.

VII. GENERAL TERMS AND CONDITIONS

- a. *MCE's Reserved Rights.* MCE may, at its sole discretion: withdraw this Request for Proposals/Offer at any time, and/or reject any or all offers or proposals submitted without awarding a contract. Respondents are solely responsible for any costs or expenses incurred in connection with the preparation and submittal of an offer or proposal.
- b. *Public Records.* All documents submitted in response to this Request will become the property of MCE upon submittal and will be subject to the provisions of the California Public Records Act and any other applicable disclosure laws. Upon submission, all proposals shall be treated as confidential until the selection process is completed. Once a contract is awarded, all proposals shall be deemed public record. MCE is required to comply with the California Public Records Act as it relates to the treatment of any information marked "confidential." Respondents requesting that portions of its submittal should be exempt from disclosure must clearly identify those portions with the word "Confidential" printed on the lower right-hand corner of the page. Each page shall be clearly marked and separable from the proposal in order to facilitate public inspection of the non-confidential portion of the proposal. MCE will consider a respondent's request for an exemption from disclosure; however, if MCE receives a request for documents under the California Public Records Act, MCE will make a decision based upon applicable laws. Respondents should not over-designate material as confidential, and any requests or assertions by a respondent that the entire submittal, or significant portions thereof, are exempt from disclosure will not be honored.
- c. *No Guarantee of Contract.* MCE makes no guarantee that a contractor and/or firm submitting documents under this solicitation will result in a contract. The successful vendor, if any, will enter into an agreement for services based on MCE's Energy Efficiency Standard Form Agreement, attached hereto as Attachment A.

By submitting a response, you agree to abide by the terms included in the attached Agreement; however, MCE reserves the right to modify the terms based on the scope of work agreed to by MCE and the selected vendor.

- d. *Insurance.* Selected vendors shall provide proof of insurance coverage meeting or exceeding the following minimum requirements prior to contracting with MCE: Commercial General Liability (\$2,000,000 per occurrence, \$4,000,000 aggregate for bodily injury and property damage), Motor Vehicle Liability Insurance (\$1,000,000), Workers' Compensation and Employer's Liability Insurance (per statute), and Professional Liability Insurance (\$1,000,000), as applicable.

VIII. QUESTIONS

To promote accuracy and consistency of information provided to all respondents, questions will only be accepted via email submitted to MCE Contracts Manager at contracts@mcecleanenergy.org and the subject line of the email must read "**MCE RFO 2023-04 Flex Market Program Implementation Question.**" The deadline for submitting questions is November 9th, 2023, at 4:00PM.

MCE will provide a written response to the questions submitted via email by November 16th, 2023, at 4:00pm to all respondents who submitted questions and/or provided a complete Notice of Interest. MCE reserves the right to combine similar questions, rephrase questions, or decline to answer questions, at its sole discretion.

All questions must be submitted through the above process. No questions will be answered over the telephone or in person. Respondents may not have any contact regarding this procurement with any MCE official or staff from the time of issuance of this solicitation until the award of contract, other than through the process for submitting questions. Any contact in violation of these provisions will be grounds for disqualification.

Thank you for your interest!

ATTACHMENT A
MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT FOR VENDORS RECEIVING MCE DATA

**(FIRST) AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND (CONTRACTOR)**

THIS (FIRST) AGREEMENT (“Agreement”) is made and entered into on [Date] by and between MARIN CLEAN ENERGY (hereinafter referred to as “MCE”) and [CONTRACTOR name], [a [state] [corporate form]] with principal address at: [address] (hereinafter referred to as “Contractor”) (each, a “Party,” and, together, the “Parties”).

RECITALS:

WHEREAS, MCE desires to retain Contractor to provide the services described in **Exhibit A** attached hereto and by this reference made a part hereof (“Services”);

WHEREAS, Contractor desires to provide the Services to MCE;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. SCOPE OF SERVICES:

Contractor agrees to provide all of the Services in accordance with the terms and conditions of this Agreement. “Services” shall also include any other work performed by Contractor pursuant to this Agreement.

2. FEES AND PAYMENT SCHEDULE; INVOICING:

The fees and payment schedule for furnishing Services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement (“Term”). Contractor shall provide MCE with Contractor’s Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any Services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond ninety (90) days will not be reimbursable. The final invoice must be submitted within thirty (30) days of completion of the stated scope of services or termination of this Agreement. MCE will process payment for undisputed invoiced amounts within thirty (30) days.

3. MAXIMUM COST TO MCE:

In no event will the cost to MCE for the Services to be provided herein exceed the maximum sum of \$[___],000.

4. TERM OF AGREEMENT:

This Agreement shall commence on [Date] (“Effective Date”) and shall terminate on [Date], unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

5. REPRESENTATIONS; WARRANTIES; COVENANTS:

5.1. CONTRACTOR REPRESENTATIONS AND WARRANTIES. Contractor represents, warrants and covenants that (a) [it is a [corporation/limited liability company] duly organized, validly existing and in good standing under the laws of the State of [insert state of organization]], (b) it has full power and authority and all regulatory authorizations required to execute, deliver and perform its obligations under this Agreement and all exhibits and addenda and to engage in the business it presently conducts and contemplates conducting, (c) it is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder, (d) it is qualified and competent to render the Services and possesses the requisite expertise to perform its obligations hereunder, (e) the execution, delivery and performance of this Agreement and all exhibits and addenda hereto are within its powers and do not violate the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, (f) this Agreement and each exhibit and addendum constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (g) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

5.2. COMPLIANCE WITH APPLICABLE LAW: At all times during the Term and the performance of the Services, Contractor shall comply with all applicable federal, state and local laws, regulations, ordinances and resolutions (“Applicable Law”)

5.3. LICENSING. At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all required permits, licenses, certificates and registrations required for the operation of its business and the performance of the Services. Contractor shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

5.4. NONDISCRIMINATORY EMPLOYMENT: Contractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, gender identity, age or condition of disability. Contractor understands and agrees that Contractor is bound by and shall comply with the nondiscrimination mandates of all federal, state, and local statutes, regulations, and ordinances.

5.5. PERFORMANCE ASSURANCE; BONDING. At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all bonding requirements of the California Contractors State License Board ("CSLB"), as may be applicable. Regardless of the specific Services provided, Contractor shall also maintain any payment and/or performance assurances as may be requested by MCE during the performance of the Services.

5.6. SAFETY. At all times during the performance of the Services, Contractor represents, warrants and covenants that it shall:

- (a) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;
- (b) abide by all applicable MCE security procedures, rules and regulations and cooperate with MCE security personnel whenever on MCE's property;
- (c) abide by MCE's standard safety program contract requirements as may be provided by MCE to Contractor from time to time;
- (d) provide all necessary training to its employees, and require Subcontractors to provide training to their employees, about the safety and health rules and standards required under this Agreement;
- (e) have in place an effective Injury and Illness Prevention Program that meets the requirements all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code. Additional safety requirements (including MCE's standard safety program contract requirements) are set forth elsewhere in the Agreement, as applicable, and in MCE's safety handbooks as may be provided by MCE to Contractor from time to time;
- (f) be responsible for initiating, maintaining, monitoring and supervising all safety precautions and programs in connection with the performance of the Agreement; and
- (g) monitor the safety of the job site(s), if applicable, during the performance of all Services to comply with all applicable federal, state, and local laws and to follow safe work practices.

5.7. BACKGROUND CHECKS.

(a) Contractor hereby represents, warrants and covenants that any employees, members, officers, contractors, Subcontractors and agents of Contractor (each, a "Contractor Party," and, collectively, the "Contractor Parties") having or requiring access to MCE's assets, premises, customer property ("Covered Personnel") shall have successfully passed background screening on each such individual, prior to receiving access, which screening may include, among other things to the extent applicable to the Services, a screening of the individual's educational background, employment history, valid driver's license, and court record for the seven (7) year period immediately preceding the individual's date of assignment to perform the Services.

(b) Notwithstanding the foregoing and to the extent permitted by applicable law, in no event shall Contractor permit any Covered Personnel to have one or more convictions during the seven (7) year period immediately preceding the individual's date of assignment to perform the Services, or at any time after the individual's date of, assignment to perform the Services, for any of the following ("Serious Offense"): (i) a "serious felony," similar to those defined in California Penal Code Sections 1192.7(c) and 1192.8(a), or a successor statute, or (ii) any crime involving fraud (such as, but not limited to, crimes covered by California Penal Code Sections 476, 530.5, 550, and 2945, California Corporations Code 25540), embezzlement (such as, but not limited to, crimes covered by California Penal Code Sections 484 and 503 et seq.), or racketeering (such as, but not limited to, crimes covered by California Penal Code Section 186 or the Racketeer Influenced and Corrupt Organizations("RICO") Statute (18 U.S.C. Sections 1961-1968)).

(c) To the maximum extent permitted by applicable law, Contractor shall maintain documentation related to such background and drug screening for all Covered Personnel and make it available to MCE for audit if required pursuant to the audit provisions of this Agreement.

(d) To the extent permitted by applicable law, Contractor shall notify MCE if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Contractor shall also immediately prevent that employee, representative, or agent from performing any Services.

5.8. FITNESS FOR DUTY. Contractor shall ensure that all Covered Personnel report to work fit for their job. Covered Personnel may not consume alcohol while on duty and/or be under the influence of drugs or controlled substances that impair their ability to perform the Services properly and safely. Contractor shall, and shall cause its Subcontractors to, have policies in place that require their employees, contractors, subcontractors and agents to report to work in a condition that allows them to perform the work safely. For example, employees should not be operating equipment under medication that creates drowsiness.

5.9. QUALITY ASSURANCE PROCEDURES. Contractor shall comply with the following requirements (the "Quality Assurance Procedures"): [____]. Additionally, Quality Assurance Procedures must include, but are not limited to: (i) industry standard best practices; (ii) procedures that ensure customer satisfaction; and (iii) any additional written direction from MCE.

5.10. ASSIGNMENT OF PERSONNEL. The Contractor shall not substitute any personnel for those specifically named in its proposal, if applicable, unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

5.11. ACCESS TO CUSTOMER SITES: Contractor shall be responsible for obtaining any and all access rights for Contractor Parties, from customers and other third parties to the extent necessary to perform the Services. Contractor shall also procure any and all access rights from Contractor Parties, customers and other third parties in order for MCE and CPUC employees, representatives, agents, designees and contractors to inspect the Services.

6. INSURANCE:

At all times during the Term and the performance of the Services, Contractor shall maintain the insurance coverages set forth below. All such insurance coverage shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, directors, officers, and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of Services. Certificate(s) of insurance must be current as of the Effective Date, and shall remain in full force and effect through the Term. If scheduled to lapse prior to termination date, certificate(s) of insurance must be automatically updated before final payment may be made to Contractor. Each certificate of insurance shall provide for thirty (30) days' advance written notice to MCE of any cancellation or reduction in coverage. Insurance coverages shall be payable on a per occurrence basis only, except those required by Section 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing in this Section 6 shall be construed as a limitation on Contractor's indemnification obligations in Section 17 of this Agreement.

Should Contractor fail to provide and maintain the insurance required by this Agreement, in addition to any other available remedies at law or in equity, MCE may suspend payment to the Contractor for any Services provided during any period of time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required insurance coverage.

6.1. GENERAL LIABILITY. The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than million dollars (\$2,000,000) with a four million dollar (\$4,000,000) aggregate limit. "Marin Clean Energy" shall be named as an additional insured on the commercial general liability policy and the certificate of insurance shall include an additional endorsement page (see sample form: ISO - CG 20 10 11 85).

6.2. AUTO LIABILITY (REQUIRED IF CHECKED). Where the Services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said Services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000).

6.3. WORKERS' COMPENSATION. The Contractor acknowledges that the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, it shall comply with this requirement and a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of Services.

6.4. PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED). Contractor shall maintain professional liability insurance with a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that Contractor has segregated amounts in a special insurance reserve fund, or that

Contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon. Coverages required by this subsection may be provided on a claims-made basis with a "Retroactive Date" prior to the Effective Date. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond termination of this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Effective Date, Contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after termination of this Agreement.

6.5. PRIVACY AND CYBERSECURITY LIABILITY (REQUIRED IF CHECKED). Contractor shall maintain privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs) of at least \$1,000,000 US per occurrence.

7. FINANCIAL STATEMENTS:

Contractor shall deliver financial statements on an annual basis or as may be reasonably requested by MCE from time to time. Such financial statements or documents shall be for the most recently available audited or reviewed period and prepared in accordance with generally-accepted accounting principles.

8. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior, written approval of MCE, except for any subcontract work expressly identified herein in Exhibit A. If Contractor hires a subcontractor under this Agreement (a "Subcontractor"), Subcontractor shall be bound by all applicable terms and conditions of this Agreement, and Contractor shall ensure the following:

- 8.1. Subcontractor shall comply with the following terms of this Agreement: Sections 9, 10, Exhibit A.
- 8.2. Subcontractor shall provide, maintain and be bound by the representations, warranties and covenants of Contractor contained in Section 5 hereof (as may be modified to be applicable to Subcontractor with respect to Section 5.1(a) hereof) at all times during the Term of such subcontract and its provision of Services.
- 8.3. Subcontractor shall comply with the terms of Section 6 above, including, but not limited to providing and maintaining insurance coverage(s) identical to what is required of Contractor under this Agreement, and shall name MCE as an additional insured under such policies. Contractor shall collect, maintain, and promptly forward to MCE current evidence of such insurance provided by its Subcontractor. Such evidence of insurance shall be included in the records and is therefore subject to audit as described in Section 9 hereof.
- 8.4. Subcontractor shall be contractually obligated to indemnify the MCE Parties (as defined in Section 17 hereof) pursuant to the terms and conditions of Section 17 hereof.
- 8.5. Subcontractors shall not be permitted to further subcontract any obligations under this Agreement.

Contractor shall be solely responsible for ensuring its Subcontractors' compliance with the terms and conditions of this Agreement made applicable above and to collect and maintain all documentation and current evidence of such compliance. Upon request by MCE, Contractor shall promptly forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the Parties shall create any legal or contractual relationship between MCE and any Subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor's obligation to pay its Subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any monies to any Subcontractor.

9. RETENTION OF RECORDS AND AUDIT PROVISION:

Contractor shall keep and maintain on a current basis full and complete records and documentation pertaining to this Agreement and the Services, whether stored electronically or otherwise, including, but not limited to, valuation records, accounting records, documents supporting all invoices, employees' time sheets, receipts and expenses, and all customer documentation and correspondence (the "Records"). MCE shall have the right, during regular business hours, to review and audit all Records during the Term and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written request from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

10. DATA, CONFIDENTIALITY AND INTELLECTUAL PROPERTY:

10.1. DEFINITION OF “MCE DATA”. “MCE Data” shall mean all data or information provided by or on behalf of MCE, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Contractor as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Contractor. MCE Data shall also include all data and materials provided by or made available to Contractor by MCE’s licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors.

“Confidential Information” under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the Parties dated [MONTH, DAY, YEAR].

10.2. DEFINITION OF “PERSONAL INFORMATION”. “Personal Information” includes but is not limited to the following: personal and entity names, e-mail addresses, addresses, phone numbers, any other public or privately-issued identification numbers, IP addresses, MAC addresses, and any other digital identifiers associated with entities, geographic locations, users, persons, machines or networks. Contractor shall comply with all applicable federal, state and local laws, rules, and regulations related to the use, collection, storage, and transmission of Personal Information.

10.3. MCE DATA SECURITY MEASURES. Prior to Contractor receiving any MCE Data, Contractor shall comply, and at all times thereafter continue to comply, in compliance with MCE’s Data security policies set forth in MCE Policy 009 (available upon request) and MCE’s Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy (“Security Measures”) and pursuant to MCE’s Confidentiality provisions in Section 5 of the Marin Clean Energy Non-Disclosure Agreement between the parties dated [DAY MONTH YEAR], and as set forth in MCE Policy 001 - Confidentiality. MCE’s Security Measures and Confidentiality provisions require Contractor to adhere to reasonable administrative, technical, and physical safeguard protocols to protect the MCE’s Data from unauthorized handling, access, destruction, use, modification or disclosure.

10.4. CONTRACTOR DATA SECURITY MEASURES. Additionally, Contractor shall, at its own expense, adopt and continuously implement, maintain and enforce reasonable technical and organizational measures consistent with the sensitivity of Personal Information and Confidential Information including, but not limited to, measures designed to (1) prevent unauthorized access to, and otherwise physically and electronically protect, the Personal Information and Confidential Information, and (2) protect MCE content and MCE Data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

10.5. RETURN OF MCE DATA. Promptly after this Agreement terminates, (i) Contractor shall securely destroy all MCE Data in its possession and certify the secure destruction in writing to MCE, and (ii) each Party shall return (or if requested by the disclosing Party, destroy) all other Confidential Information and property of the other (if any), provided that Contractor’s attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

10.6. OWNERSHIP AND USE RIGHTS.

- a) **MCE Data.** Unless otherwise expressly agreed to in writing by the Parties, MCE shall retain all of its rights, title and interest in MCE’s Data.
- b) **Intellectual Property.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party under this Agreement (“Intellectual Property”), including finished and unfinished inventions, processes, templates, documents, drawings, computer programs, designs, calculations, valuations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be owned by MCE. MCE shall have the exclusive right to use Intellectual Property in its sole discretion and without further compensation to Contractor or to any other party. Contractor shall, at MCE’s expense, provide Intellectual Property to MCE or to any party MCE may designate upon written request. Contractor may keep one file reference copy of Intellectual Property prepared for MCE solely for legal purposes and if otherwise agreed to in writing by MCE. In addition, Contractor may keep one copy of Intellectual Property if otherwise agreed to in writing by MCE.
- c) **Intellectual Property shall be owned by MCE upon its creation.** Contractor agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE’s ownership in the Intellectual Property.
- d) **Contractor’s Pre-Existing Materials.** If, and to the extent Contractor retains any preexisting ownership rights (“Contractor’s Pre-Existing Materials”) in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, Contractor hereby grants MCE on behalf of its customers and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Contractor or any Contractor Party for the sole

purpose of using such Intellectual Property for the conduct of MCE's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement is owned by MCE.

10.7. EQUITABLE RELIEF. Each Party acknowledges that a breach of this Section 10 would cause irreparable harm and significant damages to the other Party, the degree of which may be difficult to ascertain. Accordingly, each Party agrees that MCE shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of MCE Data or Personal Information, in addition to any other rights and remedies that it may have at law or otherwise; and Contractor shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of Contractor's Pre-Existing Materials, in addition to any other rights and remedies that it may have at law or otherwise.

11. FORCE MAJEURE:

A Party shall be excused for failure to perform its obligations under this Agreement if such obligations are prevented by an event of Force Majeure (as defined below), but only for so long as and to the extent that the Party claiming Force Majeure ("Claiming Party") is actually so prevented from performing and provided that (a) the Claiming Party gives written notice and full particulars of such Force Majeure to the other Party (the "Affected Party") promptly after the occurrence of the event relied on, (b) such notice includes an estimate of the expected duration and probable impact on the performance of the Claiming Party's obligations under this Agreement, (c) the Claiming Party furnishes timely regular reports regarding the status of the Force Majeure, including updates with respect to the data included in Section 10 above during the continuation of the delay in the Claiming Party's performance, (d) the suspension of such obligations sought by Claiming Party is of no greater scope and of no longer duration than is required by the Force Majeure, (e) no obligation or liability of either Party which became due or arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the Force Majeure; (f) the Claiming Party shall exercise commercially reasonable efforts to mitigate or limit the interference, impairment and losses to the Affected Party; (g) when the Claiming Party is able to resume performance of the affected obligations under this Agreement, the Claiming Party shall give the Affected Party written notice to that effect and promptly shall resume performance under this Agreement. "Force Majeure" shall mean acts of God such as floods, earthquakes, fires, orders or decrees by a governmental authority, civil or military disturbances, wars, riots, terrorism or threats of terrorism, utility power shutoffs, strikes, labor disputes, pandemic, or other forces over which the responsible Party has no control and which are not caused by an act or omission of such Party.

12. TERMINATION:

- 12.1.** If the Contractor fails to provide in any manner the Services required under this Agreement, otherwise fails to comply with the terms of this Agreement, violates any Applicable Law, makes an assignment of any general arrangement for the benefit of creditors, files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it, otherwise becomes bankrupt or insolvent (however evidenced), or becomes unable to pay its debts as they fall due, then MCE may terminate this Agreement by giving five (5) business days' written notice to Contractor.
- 12.2.** Either Party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days' written notice to the other Party. Notice of termination shall be by written notice to the other Party and be sent by registered mail or by email to the email address listed in Section 19.
- 12.3.** In the event of termination not the fault of the Contractor, the Contractor shall be paid for Services performed up to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s). Notwithstanding anything contained in this Section 12, in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Agreement. Contractor shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12, Contractor shall have delivered to MCE any and all Intellectual Property (as defined in Section 10.1(b)) prepared for MCE before the effective date of such termination.
- 12.4.** MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.
- 12.5.** Without limiting the foregoing, if either Party's activities hereunder become subject to law or regulation of any kind, which renders the activity illegal, unenforceable, or which imposes additional costs on such Party for which the parties cannot mutually agree upon an acceptable price modification, then such Party shall at such time have the right to terminate this Agreement upon written notice to the other Party with respect to the illegal, unenforceable, or uneconomic provisions only, and the remaining provisions will remain in full force and effect.
- 12.6.** Upon termination of this Agreement for any reason, Contractor shall and shall cause each Contractor Party to bring the Services to an orderly conclusion as directed by MCE and shall return all MCE Data (as defined in Section 10.1(a) above) and Intellectual Property to MCE.

12.7. Notwithstanding the foregoing, this Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such order or directive.

12.8. Notwithstanding any provision herein to the contrary, Sections 2, 3, 8.4, 9, 10, 12, 15, 16, 17, 18, 19, 20, 21, 22, 24, Exhibit B of this Agreement shall survive the termination or expiration of this Agreement.

13. ASSIGNMENT:

The rights, responsibilities, and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

14. AMENDMENT; NO WAIVER:

This Agreement may be amended or modified only by written agreement of the Parties. Failure of either Party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

15. DISPUTES:

Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between Contractor's contract representative and MCE's contract representative by good faith negotiation efforts shall be referred to Legal Counsel of MCE and an officer of Contractor for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If MCE and Contractor cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Contractor shall have the right to pursue all rights and remedies that may be available at law or in equity. All negotiations and any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

16. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California and the Parties hereto agree that venue shall be in Marin County, California.

17. INDEMNIFICATION:

To the fullest extent permitted by Applicable Law, Contractor shall indemnify, defend, and hold MCE and its employees, officers, directors, representatives, and agents ("MCE Parties"), harmless from and against any and all actions, claims, liabilities, losses, costs, damages, and expenses (including, but not limited to, litigation costs, attorney's fees and costs, physical damage to or loss of tangible property, and injury or death of any person) arising out of, resulting from, or caused by: a) the negligence, recklessness, intentional misconduct, fraud of all Contractor Parties; b) the failure of a Contractor Party to comply with the provisions of this Agreement or Applicable Law; or c) any defect in design, workmanship, or materials carried out or employed by any Contractor Party.

18. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.). Pursuant to MCE's Joint Powers Agreement, MCE is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations, and liabilities accruing and arising out of this Agreement. No Contractor Party shall have rights and nor shall any Contractor Party make any claims, take any actions, or assert any remedies against any of MCE's constituent members in connection with this Agreement.

19. INVOICES; NOTICES:

This Agreement shall be managed and administered on MCE’s behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address: invoices@mcecleanenergy.org

All other notices shall be given to MCE at the following location:

Contract Manager: Troy Nordquist

MCE Address: 1125 Tamalpais Avenue

San Rafael, CA 94901

Email Address: contracts@mcecleanenergy.org

Telephone No.: (925) 378-6767

Notices shall be given to Contractor at the following address:

Contractor:

Address:

Email Address:

Telephone No.:

20. ENTIRE AGREEMENT; ACKNOWLEDGMENT OF EXHIBITS:

This Agreement along with the attached Exhibits marked below constitutes the entire Agreement between the Parties. In the event of a conflict between the terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement shall govern.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR’S INITIALS</u>	<u>MCE’S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services		
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment		
<u>EXHIBIT C.</u>	<input checked="" type="checkbox"/>	Energy Efficiency Program Terms		

21. SEVERABILITY:

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

22. INDEPENDENT CONTRACTOR:

Contractor is an independent contractor to MCE hereunder. Nothing in this Agreement shall establish any relationship of partnership, joint venture, employment or franchise between MCE and any Contractor Party. Neither MCE nor any Contractor Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided for herein.

23. TIME:

Time is of the essence in this Agreement and each and all of its provisions.

24. THIRD PARTY BENEFICIARIES:

The Parties agree that there are no third-party beneficiaries to this Agreement either express or implied.

25. FURTHER ACTIONS:

The Parties agree to take all such further actions and to execute such additional documents as may be reasonably necessary to effectuate the purposes of this Agreement.

26. PREPARATION OF AGREEMENT:

This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and this Agreement shall not be construed against either Party as a result of the manner in which this Agreement was prepared, negotiated or executed.

27. DIVERSITY SURVEY:

Pursuant to Senate Bill 255 which amends Section 366.2 of the California Public Utilities Code, MCE is required to submit to the California Public Utilities Commission an annual report regarding its procurement from women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises ("WMDVLGBTBE"). Consistent with these requirements, Contractor agrees to provide information to MCE regarding Contractor's status as a WMDVLGBTBE and any engagement of WMDVLGBTBEs in its provision of Services under this Agreement. Concurrently with the execution of this Agreement, Contractor agrees to complete and deliver MCE's Supplier Diversity Survey, found at the following link: <https://forms.gle/DUBkcdFCskb7NNcA8> (the "Diversity Survey"). Because MCE is required to submit annual reports and/or because the Diversity Survey may be updated or revised during the term of this Agreement, Contractor agrees to complete and deliver the Diversity Survey, an updated or revised version of the Diversity Survey or a similar survey at the reasonable request of MCE and to otherwise reasonably cooperate with MCE to provide the information described above. Contractor shall provide all such information in the timeframe reasonably requested by MCE.

28. COUNTERPARTS:

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

APPROVED BY
Marin Clean Energy:

CONTRACTOR:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Chairperson
Date: _____

**EXHIBIT A
SCOPE OF SERVICES**

Contractor shall provide the following Services under the Agreement as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

SAMPLE

**EXHIBIT B
FEES AND PAYMENT SCHEDULE**

For Services provided under this Agreement, MCE shall pay Contractor in accordance with the amount(s) and the payment schedule as specified below:

In no event shall the total cost to MCE for the services provided herein exceed the **maximum sum of \$,000** for the term of the Agreement.

EXHIBIT C
Energy Efficiency Program Terms

The terms below shall apply to all Contractor Parties providing Services under the [Program Name] ("Program").

1. BILLING, ENERGY USE, AND PROGRAM TRACKING DATA (REQUIRED IF CHECKED).

- a) Contractor shall comply with and timely cooperate with all CPUC directives, activities, and requests regarding the Program and Project evaluation, measurement, and verification ("EM&V"). For the avoidance of doubt, it is the responsibility of Contractor to be aware of all CPUC requirements applicable to the Services of this Agreement.
- b) Contractor shall make available to MCE upon demand, detailed descriptions of the program, data tracking systems, baseline conditions, and participant data, including financial assistance amounts.
- c) Contractor shall make available to MCE any revisions to Contractor's program theory and logic model ("PTLM") and results from its quality assurance procedures, and comply with all MCE EM&V requirements, including reporting of progress and evaluation metrics.

2. WORKFORCE STANDARDS (REQUIRED IF CHECKED).

At all times during the Term of the Agreement, Contractor shall comply with, and shall cause all Contractor Parties to comply with, the workforce qualifications, certifications, standards and requirements set forth in this Exhibit D, Section 2 ("Workforce Standards"). The Workforce Standards shall be included in their entirety in MCE's Final Implementation Plan. If applicable, "Final Implementation Plan" is defined in the deliverables for the Services listed in Exhibit A. Prior to commencement of any Services, once per calendar year, and at any other time as may be requested by MCE, Contractor shall provide all documentation necessary to demonstrate to MCE's reasonable satisfaction that Contractor has complied with the Workforce Standards.

2.1. HVAC STANDARDS (REQUIRED IF CHECKED). For any non-residential project pursuant to this Agreement installing, modifying or maintaining a Heating Ventilation and Air Conditioning ("HVAC") system or component with incentives valued at \$3,000 or more, Contractor shall ensure that each worker or technician involved in the project, including all employees and agents of its Subcontractors, meets at least one of the following workforce criteria:

- a) Completed an accredited HVAC apprenticeship;
- b) Is enrolled in an accredited HVAC apprenticeship;
- c) Completed at least five years of work experience at the journey level as defined by the California Department of Industrial Relations, Title 8, Section 205, of the California Code of Regulations, passed a practical and written HVAC system installation competency test, and received credentialed training specific to the installation of the technology being installed; or
- d) Has a C-20 HVAC contractor license issued by the California Contractor's State Licensing Board.

This standard shall not apply where the incentive is paid to any manufacturer, distributor, or retailer of HVAC equipment, unless the manufacturer, distributor, or retailer installs or contracts for the installation of the equipment.

2.2. ADVANCED LIGHTING CONTROLS STANDARDS (REQUIRED IF CHECKED). For any non-residential project pursuant to this Agreement involving installation, modification, or maintenance of lighting controls with incentives valued at \$2,000 or more, Contractor shall ensure that all workers or technicians involved in the project, including those of its Subcontractors are certified by the California Advanced Lighting Controls Training Program ("CALTP"). This requirement shall not apply where the incentive is paid to a manufacturer, distributor, or retailer of lighting controls unless the manufacturer, distributor, or retailer installs or contracts for installation of the equipment.

3. COORDINATION WITH OTHER PROGRAM ADMINISTRATORS (REQUIRED IF CHECKED).

Contractor shall coordinate with other Program Administrators, including investor-owned utilities and local government agencies authorized by the CPUC to implement CPUC-directed energy efficient programs, administering energy efficiency programs in the same geographic area as MCE. These other Program Administrators include: Pacific Gas and Electric Company and Bay Area Regional Energy Network. The CPUC may develop further rules related to coordination between Program Administrators in the same geographic area, and any Contractor is required to comply with such rules.

4. MEASUREMENT AND VERIFICATION REQUIREMENTS, INCLUDING GUIDELINES ABOUT NORMALIZED METERED ENERGY CONSUMPTION ("NMEC") DESIGN REQUIREMENTS (REQUIRED IF CHECKED).

Contractor shall:

1. Only enroll customers that qualify for Program services.
2. Comply with current policies, procedures, and other required documentation as required by MCE;
3. Report Customer Participation Information to MCE.

4. Work with MCE's evaluation team to define Program-specific data collection and evaluability requirements, and in the case of NMEC which independent variables shall be normalized.

Throughout the Term, MCE may identify new net lifecycle energy savings estimates, net-to- gross ratios, effective useful lives, or other values that may alter Program Net Lifecycle Energy Savings, as defined in Exhibit A, if applicable. Contractor shall use modified values upon MCE's request, provided MCE modifies Contractor's Program budget and/or overall Program net lifecycle Energy Savings consistent with the requested change. MCE shall determine any budget increases or decreases in its sole discretion.

For Programs claiming to-code savings: Contractor shall comply with Applicable Law and work with MCE to address elements in its Program designs and Implementation Plans, such as:

1. Identifying where to-code savings potential resides;
2. Specifying which equipment types, building types, geographic allocations, and/or customer segments promise cost-effective to-code savings;
3. Describing the barriers that prevent code-compliant equipment replacements;
4. Explaining why natural turnover is not occurring within certain markets or for certain technologies; and
5. Detailing the program interventions that would effectively accelerate equipment turnover.